

**APPLICATION OF JOE DAVID JACOBSON
TO THE APPELLATE JUDICIAL COMMISSION FOR THE
JUDGE WOLFF VACANCY
SUPREME COURT OF MISSOURI**

***RESPONSES TO THESE QUESTIONS WILL BE MADE PUBLIC IF THE
APPLICANT IS NOMINATED FOR THIS VACANCY***

A. PERSONAL INFORMATION

1. Present principal occupation or title:
In private practice as a shareholder in Green Jacobson, P.C.
2. Are you at least 30 years of age? Yes (x) No ()
3. (a) How many years have you been a citizen of the United States?

My entire life, 50 years.

(b) How many consecutive years immediately preceding your application have you been a qualified voter of Missouri?

20 years, since 1991.
4. State the date you were admitted to The Missouri Bar and whether your license is in good standing. If not, explain in detail.

Admitted October 10, 1986. I am in good standing.

B. EDUCATIONAL BACKGROUND

5. (a) State the name and address of all colleges and universities attended, other than law school, together with the dates and degrees received.

Name	Address	Dates Attended	Degree
Washington University	One Brookings Drive St. Louis, MO 63130	1979-1983	A.B. Philosophy

(b) List/describe any college or university activities, scholastic achievements and other awards or honors you think are relevant to the commission's decision.

Chancellor's Honorary Scholar, National Merit Scholar. Attended college without parental support and worked all four years. Active in student publications all four years. Held positions including layout editor and news editor on *Student Life*, the twice-weekly student newspaper, and editor-in-chief of *Subject to Change*, a quarterly journal of art, literature, and politics.

6. (a) State the name and address of all law schools attended together with the dates and degrees received.

Name	Address	Dates Attended	Degree
Boston University School of Law	765 Commonwealth Ave. Boston, MA 02215	1983-1986	J.D. (magna cum laude)

(b) List/describe any law school activities, scholastic achievements and other awards or honors you think are relevant to the commission's decision.

I received named scholarship recognition from the law school each year. I worked as a research assistant for professors Michael Harper and Ira Lupu during my second and third year of law school, and was their primary research assistant for an article they wrote, "Fair Representation as Equal Protection," 98 Harvard Law Review 1212 (April 1985).

Although not a member of the BUSL Law Review, I was asked at the end of my second year by the incoming editor-in-chief to create the writing competition problem, model answer, and grading rubric to be used by the law review to select new law review members. At the time, law review membership was offered to first-year law students who finished in the top 20 or 25 percent of their class and produced a superior product in the writing competition. I was asked to prepare these materials because of the editor's view that my writing was better than that of the law review members.

I worked one summer for the Appellate Unit of the Suffolk County (Boston) District Attorney researching and writing appellate briefs. My arguments in one such brief were essentially adopted in full by the Massachusetts Supreme Judicial Court in *Commonwealth v. Sylvester Lindsey*, 396 Mass. 840 (1986).

I supported myself during law school by performing legal research and writing briefs for a solo lawyer, by publishing an unofficial, advertising-supported, law school newspaper, and by typing papers for other students.

7. If you were a student at any school from which you were suspended, placed on probation, or expelled by school authorities, for any reason, describe the circumstances.

Never disciplined by any school.

C. PROFESSIONAL BACKGROUND AND EXPERIENCE

8. State, in chronological order (starting with the earliest employment), significant non-law-related employment prior to or since law school. To the extent reasonably available to you, include the name and address of each employer and the dates of employment.

Employer	Address	Dates of Employment
Publications Department Washington University	One Brookings Drive St. Louis, MO 63130	Approx. 8/79 to 5/83 (excluding summers)
Kelly Services	New Jersey	Summer 1981 and summer 1983 (or 1982)
International Flavors & Fragrances	1515 State Highway 36 Union Beach, NJ 07735	Summer 1982 (or 1983)

9. State, in chronological order (starting with the earliest employment), all employment from the beginning of law school to the present. For legal employment, describe the positions you have held, e.g., associate, partner, law clerk, general counsel.

Employer	Address	Dates of Employment	Position
Self-employed	Boston, MA	Approx. 9/83- 5/86	Typed papers for other students
Solo lawyer whose name I no longer recall	Boston, MA	Approx. 12/83-5/86	Legal research and writing
Boston University School of Law	765 Commonwealth Ave. Boston, MA 02215	Approx. 5/84- 5/85 and 8/85-5/86	Research assistant
Appellate Unit, District Attorney, Suffolk County, Massachusetts	One Bulfinch Place Boston, MA 02114	Approx. 5/85- 8/85	Summer intern
Husch Eppenberger	100 North Broadway	6/86-12/87	Associate

Donohue Elson & Cornfeld (successor firm known as Husch Blackwell LLP)	St. Louis, MO 63101 (successor firm now at 190 Carondelet Plaza Suite 600 Clayton, MO 63105		
Schwalb Donnenfeld Bray & Silbert, P.C.	1025 Thomas Jefferson, N.W. Washington, D.C. 20007	4/88-12/90	Associate
Green Hoffmann & Dankenbring, P.C.	7733 Forsyth Blvd. Suite 800 Clayton, MO 63105	1/91-12/94	Associate
Green Jacobson, P.C.*	7733 Forsyth Blvd. Suite 700 Clayton, MO 63105	1/95-present	Shareholder (colloquially, "Partner")
Housing Authority of St. Louis County ("HASLC")	8865 Natural Bridge St. Louis, Mo 63121	Approx. 1997-present	General Counsel (HASLC is a law firm client)

* My law firm's name history is as follows: Green Schaaf & Margo, P.C.; Green Schaaf & Jacobson, P.C.; Green Jacobson & Butsch, P.C.; and Green Jacobson, P.C.

10. List any other states, courts or agencies in which you are licensed as an attorney.

Bar Admission	Date
Illinois	05/07/87
District of Columbia	12/5/88
U.S. Supreme Court	4/30/90
U.S. Court of Appeals for Eighth Circuit	Date unknown
U.S. Court of Appeals for Federal Circuit	07/15/09
U.S. District Courts for: Eastern District of Missouri; Western District of Missouri; Southern District of Illinois; and Central District of Illinois. U.S. Securities Exchange Commission	Dates unknown Date unknown

11. Describe the nature of your experience in trial and appellate courts and explain how they demonstrate the quality of your legal work. (*You either may take as much space as you need here or attach your response on separate sheets*). Include in your response:
- a. **Appellate Experience:** Please include a representative list of cases you have briefed and/or argued (if you are a judge, include representative cases from your practice prior to your judicial appointment). To the extent reasonably available to you:
 - i. State the style, date, court and, if published, the citation;
 - ii. Identify the client(s) you represented and opposing counsel; and
 - iii. Give a one-paragraph description of the case and your role in it.

My best estimate is that I have had a substantial involvement in at least 80 appeals. By substantial involvement I mean that I was either (i) at least the primary author of the initial draft of the brief (a common experience in the early years of my practice), or (ii) argued the case, or (iii) both. During the past 15 years, for the great majority of my appeals, I have both written the briefs, in their entirety, and argued the appeals.

To illustrate the type of appeals I have handled, I describe below eleven appeals in which I developed the legal theories, performed the legal research, wrote the briefs, and argued the appeal. In some of the appeals, I solicited and considered comments on my drafts from other lawyers in my firm, or from co-counsel, but in all of these appeals the work product was my own. These appeals demonstrate my ability to master a wide variety of subject matters, some highly technical.

Green Edge Enterprises, LLC v. Rubber Mulch Etc., LLC, 620 F.3d 1287 (Fed. Cir. 2010).

I represented the appellant, Green Edge Enterprises, and the cross-appellees, Green Edge Enterprises, Lee Greenberg, and Judy Smith. The appellee/cross-appellant, Rubber Resources LLLP, was represented by Ronald D. Foster, of South Bend, IN. The appellee/cross-appellees International Mulch and Michael Miller, were represented by Jennifer Hoekel and Scott Eidson of Senniger Powers LLP, St. Louis, MO.

This was a patent infringement case. I represented the inventors and their company in an appeal from a summary judgment holding the patent invalid for the inventors' alleged failure to disclose the best mode of practicing the invention. The defendant cross-appealed from summary judgment on its counterclaim for violation of the Lanham Act for alleged unfair competition. I wrote the appellants' brief and argued the appeal. My associate wrote the first draft of our reply brief, which I revised. The Federal Circuit reversed the judgments.

Carpenter v. Countrywide Home Loans, Inc., 250 S.W.3d 697 (Mo. banc 2008).

I represented the respondents, Cynthia Carpenter, Andrew Cole, and Cheryl Held, and the court-certified class in this appeal by defendants from a judgment entered after a bench trial. The appellant was represented by Tom Hefferon of Goodwin Procter LLP, Washington, DC, James McGarry, Goodwin Procter, LLP, Boston, MA, and John Hessel and Richard Ahrens of Lewis Rice & Fingersh, St. Louis, MO.

This was a class action involving the unauthorized practice of law by a mortgage lender that charged its borrowers a separately-stated fee for the preparation of legal documents. I helped develop the legal theory. I tried the case in a bench trial with several of my partners. I wrote the respondent's brief and argued the appeal. This case presented constitutional issues and other defense issues that were not resolved in our earlier, related case, *Eisel v. Midwest Bankcentre*, mentioned below.

My work on this appeal and the *Eisel* appeal demonstrates my ability to understand and articulate the important public policies underlying both statutes and case law that, on their surface, appear not to present clear guidance on an issue. It is notable that the same legal issues were raised at about the same time in a half-dozen state supreme courts. The plaintiffs' lawyers in the other states were not as successful in articulating the public policy concerns and, as a result, the other states' courts reached the opposite conclusion, in some cases overruling prior authority to reach their decision.

Eisel v. Midwest Bankcentre, 230 S.W.3d 335 (Mo. banc 2007).

I represented the respondents, Patricia and Clark Eisel, and the court-certified class in this appeal from a judgment entered in their favor after a bench trial. The appellant was represented by Jay Levitch, Charles A. Seigel, Harold Satz, and Doreen Dodson of the Stolar Partnership, St. Louis, MO.

This was a class action involving the unauthorized practice of law by a mortgage lender that charged its borrowers a separately-stated fee for the preparation of legal documents. I helped develop the legal theory. I tried the case in a bench trial on stipulated fact with several of my partners. I wrote the respondent's brief and argued the appeal. The Missouri Supreme Court unanimously agreed with our position. The case was important, and the opinion has been cited 20 times in the state and federal courts.

Daoukas v. City of St. Louis, 228 S.W.3d 30 (Mo. App. E.D. 2007).

I represented the respondent/cross-appellant, James T. Daoukas. The appellant, William Lacey, and the cross-respondent, the City of St. Louis, were represented by Ronald Fox of the City Counselor's Office, St. Louis, MO.

Our client suffered severe electrical burns while working on an electrical reconstruction project at Lambert Airport. We sued the City's supervising electrician, Lacey, for negligence in dismantling certain safety devices immediately prior to Daoukas and a second electrician beginning work. We also sued the City under a theory of respondeat superior. Two of my partners tried the case. The defendants argued, among other theories, that our claim was merely for premises liability and that no duty was owed. The trial court granted summary judgment to the City. The trial resulted in a judgment against Lacey. I wrote the briefs and argued the appeal. We preserved the judgment against Lacey. The Court of Appeals reversed the judgment against the City on the grounds that Lacey's negligence was within the scope of his employment by the City.

Klokkenga v. Carolan, 200 S.W.3d 144 (Mo. App. W.D. 2006).

I represented the respondents, Gerald and Karen Carolan. The appellant was represented by Andrew Farwell, Kirksville, MO.

This was a dispute between neighboring landowners, farmers, over the flow of surface waters. My law partner tried the case. I wrote the respondent's brief and argued the appeal. The judgment was affirmed.

My work on this appeal demonstrates my ability to master land- and water-use rules of law important to those who live and work in the rural areas that form the great majority of Missouri's territory.

O'Brien & Gere Technical Services v. Fru-Con/Fluor Daniel Joint Venture, 380 F.3d 447 (8th Cir. 2004).

I represented the appellee, O'Brien & Gere Technical Services ("OBG"). The appellant was represented by Roger Edgar at Greensfelder, Hemker & Gale, P.C., St. Louis, MO.

My partner and I tried this three-week bench trial concerning a subcontract for the construction of a group of metal buildings as part of the \$1 billion expansion of the Proctor & Gamble facility in Cape Girardeau. I was the second chair. The general contractor (appellant) refused to pay our client and terminated OBG's contract after substantial work was performed. A counterclaim of approximately \$40 million was asserted against OBG. We

obtained a net judgment for our client. I wrote the appellee's brief and argued the appeal. The judgment was affirmed.

In re BankAmerica Corporation Securities Litigation, 350 F.3d 747 (8th Cir. 2004).

The procedural posture of this appeal was very complex, as it was an appeal by some two lead plaintiffs of one of four court-certified classes from a court-approved settlement of a class action in which the other lead plaintiffs of that class, the lead plaintiffs of three other court-certified classes, and the defendants all approved of the settlement, while three groups of interveners opposed the settlement or wanted fees for their prior objections. With respect to the primary dispute on appeal, I represented the appellee NationsBank Classes. The appellant NationsBank lead plaintiffs were represented by Mitchell A. Margo of Curtis Oetting Heinz & Garrett, P.C., Clayton, MO, and Professor Geoffrey C. Hazard, Jr., at the time the Sterling Emeritus Professor of Law at Yale University, New Haven, CT. There were numerous other parties also represented by counsel, including defendant Bank of America Corporation, represented by a team of lawyers from Wachtell Lipton Rosen & Katz of NYC, led by Warren Stern and Robert Mazur, and by Michael Clear and Jeffrey Russell of Bryan Cave, LLP, of St. Louis, with additional assistance from a large Los Angeles law firm.

This was a securities class action arising out of the 1998 merger between the then-NationsBank Corporation and the former BankAmerica. My firm took the lead in the case representing what were referred to as the NationsBank Classes. I devoted the majority of my time to this case for a period of some four years. The result was a cash recovery of \$490 million in favor of the four court-certified classes. I wrote the briefs and argued the appeal.

In re BankAmerica Corp Securities Litigation, 263 F.3d 795 (8th Cir. 2001).

This was an earlier appeal in the same case described above. I represented the NationsBank Classes. This time the appellants were a group of California plaintiffs in a putative state-court class action filed with respect to the same merger transaction. The state court class action was filed by the San Diego and San Francisco offices of Milberg Weiss Hynes & Lerach, at the time the dominant plaintiffs' class action law firm in the country. Appellants were represented by Arthur R. Miller, the Harvard law professor and co-author of *Federal Practice and Procedure* (Wright & Miller), with assistance from William Lerach and Reed Kathrein of Milberg Weiss.

This was an appeal from an injunction of a state-court action pursuant to the federal All Writs Act. Under the PSLRA, the plaintiff or plaintiffs with the greatest financial interest in the claim becomes the lead plaintiff, unless otherwise disqualified. The lead plaintiff or lead plaintiffs control the

litigation. Milberg Weiss's clients did not have a substantial financial interest in the claim, and thus did not apply for lead plaintiff status in the federal case. Instead, they filed a competing, state-court lawsuit on the same claim. It soon became evident that Milberg Weiss was looking to enter into a quick, cheap settlement with Bank of America. Determined to stop this from happening, I developed the theory that the PSLRA, although silent on the matter, provided an express exception to the All Writ Act's ban on federal court's enjoining state court proceedings. The idea was that the authority given by the PSLRA to the lead plaintiffs to control the case would be thwarted if persons with a lesser financial interest in the case could file and settle an independent state-court action asserting the same claims. This was a creative theory, and none of the lawyers in the federal case, except my law partners, expressed a belief it had a chance of success. I nevertheless persuaded the district court and the Eighth Circuit that my theory was correct, thereby establishing a new express exception to the All Writs Act. Such exceptions are quite rare; in the 200-plus years since the All Writs Act was enacted, only about half-dozen federal statutes have been held to expressly provide an exception to the Act's ban on federal courts enjoining state court proceedings.

National Heritage Life Ins. Co. v. Frame, 41 S.W.3d 544 (Mo. App. E.D. 2001).

I represented the appellant, Richard Frame. A second appellant, Bill Bruce, was represented by Donald Carmody and Jack Hilton of Carmody MacDonald Hilton Wolf & Keast, Clayton, MO. I wrote the appellant's opening and reply briefs and argued the appeal. Bruce's lawyers generally adopted my arguments in their briefs. The respondent was represented by Don Sherman, Robert Susman, and Ellen Siegel, of the Goffstein Raskas law firm, St. Louis, MO.

Our client and Bruce were guarantors of a loan made to a real estate company in which they had an interest. The company failed, as did the bank that made the loan. After many years the respondent life insurance company appeared on the scene, claiming to be the assignee of the loan and of the guarantee. I did not represent Frame in the trial court. Summary judgment was entered against Frame and Bruce on their guarantees. I was asked to handle the appeal. There were complications in the record due to the bank's failure, a receivership established by the Federal Savings and Loan Insurance Corporation (FSLIC) (predecessor to the Resolution Trust Corporation (RTC)), the inclusion of the loan in a pool of assets used in forming certain collateralized securities, and a Delaware insurance receivership and liquidation. Notwithstanding the extremely complex record, I was able to establish that there were two clear gaps in the alleged series of assignments leading to the respondent, thus demonstrating that the respondent had not shown that it owned the note or was benefited by the

guarantees. There were also complex statute of limitations issues under the RTC Act. The Court of Appeals reversed the summary judgment and entered judgment in favor of the appellants.

66, Inc. v. Crestwood Commons Redevelopment Corp., 998 S.W.2d 32 (Mo. banc 1999).

I represented the appellant, 66, Inc., a subsidiary of Wehrenberg Theatres. The respondents were represented by Gerry Carmody of Bryan Cave, St. Louis, MO, assisted by Dan Lesicko of the same law firm. Bill Travis of Greensfelder Hemker & Gale, P.C., was co-counsel for respondent Hycel Partners III, L.P., but Gerry Carmody primarily handled the case for respondents.

This case arose out of an abandoned condemnation brought under Chapter 523, RSMo., concerning redevelopment corporations. 66, Inc. was the property owner. When the condemnation against its property was abandoned, it obtained a statutory interest judgment of \$250,000 against the condemnor, Crestwood Commons Redevelopment Corporation, a shell corporation with no assets. I filed suit for 66 against Crestwood Common's owners, Schnucks and Hycel Partners III, under an innovative damage theory I based on some old cases from the 1850s through the 1930s. The Missouri Supreme Court adopted my theory, and also adopted my argument that Crestwood Common's corporate shell could be pierced because of the parents' failure to adequately fund the company to pay the statutory interest judgment.

Estate of Davis v. Delo, 115 F.3d 1388 (8th Cir. 1997).

This was a court-appointed prisoner's civil rights case brought under 42 U.S.C. §1983. I represented the plaintiff, Jeffrey Davis, both in trial and on appeal, where he was the appellee. The appellants were represented by Paul Rauschenbach, Assistant Attorney General for the State of Missouri. I wrote all the briefs and argued the case.

I was still an associate, approximately six years out of law school, when I was assigned this case. I treated Mr. Davis, who then went by the name Davis-El, and his case the way I would treat any case for a fee-paying client. I visited him several times in prison and took the necessary depositions. We had a bench trial before then newly-appointed U.S. District Judge Carol Jackson. During the trial the State offered Mr. Davis \$1,000 for settlement, a very large sum in a prisoner's civil rights case. Mr. Davis declined the settlement, stating that having the public really know what was going on in its prisons was more important to him than the money. The Court issued its judgment more than two years after the trial ended. The Court awarded the full amount of damages I had requested: \$10,000 actual damages against the

defendants, and \$5,000 punitive damages against the correctional officer who primarily used excessive force against Mr. Davis and \$5,000 punitive damages against the prison superintendent, who I established had received multiple warnings about the correctional officer's dangerous tendencies. I called Mr. Davis to inform him about the judgment, and learned that he had been murdered in the interim. I contacted the public administrator, gave him the information I had about Mr. Davis's family, got permission to continue to represent the estate on appeal, and preserved the judgment.

- b. **Trial-Level Experience:** Please include a representative list of cases and/or administrative hearings you have handled (if you are a judge, include representative cases from your practice prior to your judicial appointment). To the extent reasonably available to you:
- i. State the style, date and court;
 - ii. Identify who you represented and opposing counsel;
 - iii. State whether the case was disposed of following a jury trial, bench trial or at what other stage; and
 - iv. Give a one-paragraph description of the case and your role in it.

I have tried to a verdict or judgment in excess of 50 cases, including both bench and jury trials. My trials have ranged from two-hour Associate Circuit bench trials to three-week federal and state court jury trials. My typical case is a week in duration. I have handled hundreds of other cases that have resolved at some point prior to judgment.

Some of my cases have already been discussed above in connection with my appeals. I therefore will just list my four most recent trials.

Patrick Brady, et al., v. Air Line Pilots Association, International, Civil Action No. 02-2917 (JEI) (D.N.J. 2011).

I represent a court-certified class of former TWA pilots who have sued their former union, the Air Line Pilots Association, International ("ALPA"), for its alleged breach of its duty of fair representation. ALPA is chiefly represented by Steven Fram of Archer & Greiner, P.C., Haddonfield, NJ, and by Daniel Katz, Katz & Ranzman, P.C., Washington, DC. The case is presently pending in trial before a jury. We have been in trial since June 6, 2011. The case is presently expected to end sometime during the week of July 11.

This case arises out of American Airlines' acquisition of TWA in 2001. The TWA pilots allege that ALPA failed to adequately represent their interest in the negotiations to merge the seniority lists of the two airlines because of ALPA's desire to ingratiate itself with the more than 11,000 American Airlines pilots, who ALPA wished to have join its union. My partner Allen Press has been preparing the case for five years. I am second-chairing the

trial, with the primary responsibility for cross-examining the ALPA-employed witnesses. We are also assisted by two lawyers from our local New Jersey counsel.

Green Edge Enterprises, LLC v. Rubber Mulch Etc., LLC, Case No. 4:02CV566TIA (E.D. Mo. 2011).

I represented plaintiff Green Edge Enterprises, the owner of a patent for artificial mulch, and the inventors, Lee Greenberg and Judy Smith, who, along with Green Edge, were counterclaim defendants in a Lanham Act claim. Green Edge's claim was for patent infringement. The alleged infringer, Rubber Resources, Ltd., LLP, was represented by Ronald D. Foster, South Bend, IN, Ryan Fountain, Mishawaka, IN, and Sara Pfrommer, Park City, UT. Jack Quinn, Armstrong Teasdale, LLP, St. Louis, MO, was also listed as an attorney for Rubber Resources. The counterclaim defendants International Mulch Corporation and Michael Miller were represented by Jennifer Hoekel and Scott Eidson of Senniger Powers, LLP, St. Louis, MO, with some assistance from Richard Brophy and Keith Rabenberg of the same law firm.

This was a jury trial. Rubber Resources dismissed its Lanham Act counterclaim with leave to appeal related trial court rulings during the trial. The jury's verdict found that Rubber Resources had willfully infringed my clients' patent. The jury's verdict also found, however, that the patent was invalid because of prior art in the field. Final judgment has not yet been entered in the case. I tried this case by myself. The other parties worked together against me on the issue of patent validity.

Advisory Group USA, LC v. Richard Frame, Case No. 09SL-AC17994 (St. Louis County Circuit Court, Div. 42, October 2010).

I represented the defendant Richard Frame. The plaintiffs were represented by Robert Seipp of Kodner Watkins Muchnick & Weigley, L.C., Clayton, MO. The case was settled after a couple days of jury trial.

My client's former accountant sued him under a personal guarantee for accounting services allegedly provided to companies in which he had an ownership interest. We counterclaimed for damages resulting from accounting negligence. We also asserted a prior accord and satisfaction settling the amount of the debt. The case settled during trial. I handled all aspects of the case by myself.

William K. Halliburton v. Stephen C. Leidholdt, Case No. 08CC-875 (St. Louis County Circuit Court, Div. 8, April 2010).

I represented the defendant Stephen Leidholdt, in an action brought by his former business partner. I was assisted at trial by an associate, Tim Lemen. The former business partner, William Halliburton, and his wife and his trust, were represented by Gary Sarachan of Capes Sokol Goodman & Sarachan, P.C., Clayton, MO, assisted by Sheila Greenbaum and Drey Cooley of the same law firm.

The primary claim in the lawsuit was that Leidholdt had breached his fiduciary duties to the business when he left the business to start a competing company. The case was prepared for trial by my law partner, Martin Green, with Tim Lemen's assistance. Martin was unable to try the case, however, because of a short-term health issue, so I tried the case in his place. The case ended with a jury verdict against our client in the sum of \$4.2 million. The client hired Bryan Cave to handle the appeal and also filed a bankruptcy in Florida. I understand that the case ultimately settled for a substantially reduced amount.

- c. **Judicial Experience:** If you are a judge, commissioner, or are serving or have served in another judicial capacity, please describe the nature and extent of your judicial responsibilities:
 - i. Include the dates you have served at each level;
 - ii. Identify the types of dockets you have handled; and
 - iii. State any special expertise you have developed that you believe is relevant to your qualifications for the position for which you are applying.

I am not and have never been a judge.

12. Describe any additional legal experience that you believe may be relevant to the decision of the commission (e.g., work as a law professor, in government, as corporate or other legal counsel).

My work as General Counsel for the Housing Authority of St. Louis County (HASLC) has provided me with extensive non-litigation experience. My role in these non-litigation areas is to review and assist in negotiating real estate, development, and employment contracts, provide general legal and business advice, address tax issues, and even occasionally provide relevant training for staff. HASLC has well over 100 employees and 1000s of clients, so my work with them is really serving as general counsel for a mid-sized business.

My work as the attorney for the New Northside Missionary Baptist Church in north St. Louis County has given me a good backing in non-profit and community service organizations. I have been performing work for the church on a *pro bono* basis for approximately the past 15 years, and have formed a close professional and personal bond with the church's pastor, Bishop Willie J. Ellis, Jr. I regularly give the church advice and assistance with respect to employment, insurance, real estate, and financing issues.

There are three matters of particular note in my work for the church. The first involved the acquisition, financing, development, and refinancing of the church's Family Life Center. The center started out as an abandoned Aldi's Supermarket. I was involved in negotiating the donation of Aldi's leasehold interest to the church; in negotiating the architect and construction contracts for its rehabilitation; and in negotiating the bank loans for its construction. Later, I have been involved in negotiating two refinancings of the loans as well as a debt restructuring during the 2008 recession, which greatly impacted the church's contribution and day care income.

The second major project I have worked on for the church over the years involves the development of a cell phone tower on property owned by the church. I helped negotiate the terms of the original lease and several amendments to the lease to reflect subleases. I have also dealt from time to time with attempts by the tenant to negotiate a reduction in lease rates. I recently assist the church in selling the rental stream for an immediate cash payment plus a percentage of future increases to rents. In all of these cases, I was able to negotiate for the church a substantial improvement over the contractual terms initially offered to them.

The third major item I've worked on for the church concerns efforts by the City of St. Louis to acquire by eminent domain portions of the church's property fronting on Goodfellow Road. This work led to a negotiated resolution.

13. List all bar associations and other professional societies of which you are a member, with any offices held and dates.

I am a member of the American Bar Association, the Bar Association of Metropolitan St. Louis (BAMSL), and the mandatory Bar Associations for the jurisdictions where I am licensed. I am not a member of any other professional societies. I have not been an officer of any association.

With respect to BAMSL, I am an active member of the Bench and Bar Committee and of the Fee Dispute Committee. The Bench and Bar Committee organizes an annual conference of lawyers and judges. I help plan

the event. In those years where my trial schedule does not conflict, I attend the conference and am frequently a CLE presenter at the conference. As part of the Fee Dispute Committee, I investigate client fee complaints. I also sometimes serve as a mediator or arbitrator to resolve such claims. I have in the past served as a member of the trial practice and appellate practice committees. I have taught CLEs in the past, but am not a frequent presenter.

14. List any professional articles or books authored by you that have been published or any special recognition or award of a professional nature you have received.

None.

D. PUBLIC SERVICE

15. Describe your community activities, including any organizations not listed elsewhere with which you are affiliated.

I am not an organization person. I am listed as a member of various charitable groups to whom I have given money, but I am not active in those groups. I have assisted on some *amicus curiae* briefs on behalf of the American Civil Liberties Union and the National Association of Criminal Defense Attorneys, but that is not a frequent practice.

I do a fair amount of pro bono legal work, but do not do it through any organization. I typically handle one or two pro bono cases per year in addition to my work for the New Northside Missionary Baptist Church.

16. Do you now hold or have you ever held an elective or an appointive public office or position? If yes, provide details.

No.

17. Provide the branches and dates of (a) military service or (b) other public service not otherwise disclosed in this application. If discharged from the military, state whether the discharge was other than honorable.

Never served in the military or in other public service.

E. PROFESSIONAL CONDUCT AND ETHICS

18. Were you ever refused admission to the bar of Missouri or the bar of another state or the federal courts? If yes, provide details.

No.

19. Have you ever been disciplined, admonished or cited for breach of ethics or professional conduct by the Supreme Court of Missouri or by any court or bar association or committee thereof? If yes, provide details.

No.

20. If you are or were a member of the judiciary of the State of Missouri, please state:

- a. Whether an order of discipline ever has been entered against you by the Supreme Court of Missouri for breach of the Code of Judicial Conduct or the Canons of Judicial Conduct. If yes, provide details.

Not applicable.

- b. Whether a reprimand or admonition ever has been entered against you by the Commission on Retirement, Removal and Discipline for any of the causes specified in Supreme Court Rule 12.07. If yes, provide details.

Not applicable.

21. Have you have ever been held in contempt of court? If yes, provide details.

No.

22. Have you ever been sued by a client or been a party to any other litigation, other than as guardian ad litem, plaintiff ad litem or defendant ad litem?

If your answer is yes, state the style of the case, where it was filed and explain in detail. If you are a judge and you have been sued in your judicial capacity, list only those cases where you are or were other than a nominal party.

Yes. I have been a party in three cases, one of which is still pending.

The first case was *Ivan Rhone v. Richard Horton, et al.*, Case No. 032-717 (City of St. Louis Circuit Court). This case related to an earlier case in which I had represented my now co-defendants, Richard “Onion” Horton, Mark Kasen, and Onion Horton Productions, Inc., against their former attorneys for breach of fiduciary duty. Mr. Rhone had filed a copycat lawsuit, but that suit was dismissed because he had not had an attorney-client relationship with the lawyers. Horton and Kasen had nonetheless offered, for no consideration, to split their net recovery, if any, with Rhone in equal thirds. I prevailed in the case for Horton and Kasen and, per their directions, sent Rhone one-third of the net recovery after deduction of legal fees and expenses. I spoke to Mr. Rhone before sending him the check and walked through the calculations with him, and he said he was happy with the result. Shortly thereafter, however, his attorney, Dorian Amon, filed the suit. His theory was the Rhone was entitled to one-third of the gross recovery, and that Horton and Kasen were to bear all of the expenses of litigation, including attorney’s fees. It was my view that the suit was personal to Mr. Amon, who was upset that I had sent the check directly to Mr. Rhone and not through him. (It was my belief that Amon intended to take at least a third of Rhone’s recovery, and I believed that that would be improper since Amon did not do any work to recover the money for Rhone.)

I filed a motion to disqualify Mr. Amon as Mr. Rhone’s attorney because of his prior representation of Mr. Horton in an earlier phase of his efforts to obtain a radio station. That motion was granted. No new lawyer entered in his stead. Eventually I filed a motion that resulted in the action being dismissed without prejudice for failure to prosecute. Mr. Amon filed an appeal from the dismissal. I moved to dismiss the appeal, and the Court of Appeals, Eastern Division, granted that motion to dismiss in Appeal No. ED84397 on July 13, 2004. Mr. Rhone then filed a pro se appeal of the same dismissal. I again moved to dismiss the appeal, and the Eastern Division again granted that motion in Appeal No. ED85946 on May 5, 2005. I handled this case by myself without assistance.

The second case was *Michael Koehler vs. Martin Green, et al.*, Case No. 4:05cv367 (JFN) (E.D. Mo.). This case was filed by an unhappy Lead Plaintiff in the *BankAmerica* class action discussed above, and alleged that I, along with all of the other lawyers who had represented the NationsBank Classes, had breached our fiduciary duties to Koehler and the Classes. The case was originally filed in the U.S. District Court for the Southern District of New York, but the district judge *sua sponte* transferred the case to the Eastern District of Missouri, where the underlying class action had been pending. I represented all of the lawyer-defendants, except for Don Clooney and the Entwistle & Cappucci partners, who each obtained separate counsel. I filed a motion to dismiss on grounds of *res judicata*, collateral estoppel, and failure to state a claim because the PSLRA does not give rise to a private cause of

action for the conduct alleged. The case was dismissed in April 2006. Koehler appealed to the Eighth Circuit. I handled the appeal, although Clooney and Entwistle & Cappucci's lawyers each filed short briefs and shared the argument with me. The Court of Appeals affirmed the dismissal, and dismissed the appeal for lack of jurisdiction. *Koehler v. Brody*, 483 F.3d 590 (8th Cir. 2007).

The third and final time that I have been a party to litigation is in a pending case, *Green Jacobson, P.C. v. Edward Larry Rice*, Case No. 10SL-CC01556 (St. Louis County Circuit Court, Div. 17). I was representing Mr. Rice and his business partner in an action in Jefferson County in which they had been sued by an international food corporation with whom they had been in business. It was an extremely complex and time-consuming litigation. I was also representing Rice's partner and their company in companion litigation in federal court in St. Louis. A few months before the scheduled trial date in Jefferson County, Mr. Rice, who was the primary client and in charge of their finances began seriously slowing down and decreasing his payments on his bills. When I spoke to him about the outstanding amount, he disclosed that he intended to owe me substantially more than the \$30,000 balance of his retainer so that he could have leverage over me. I would have liked to withdraw from the case at that time, but concluded that under Supreme Court Rule 4-1.16(b)(1), I could not because my withdrawal would have a materially adverse affect on the clients because of the combination of (a) the complexity of the case, and (b) the limited amount of time left before the trial date. I therefore continued to take depositions — many of which were in other cities — and spend my time and money preparing the case for trial. My "luck" changed, however, when the plaintiffs caught Rice in an attempt to destroy numerous boxes of documents that had not been produced by him in discovery. The trial judge set aside the trial date, thus allowing me to withdraw. (As an aside, Rice and his partner opposed my withdrawal, contending that I should continue to represent them without compensation or reimbursement through the end of the case.)

After application of the retainer, Rice and his partner still owed us approximately \$100,000 in fees and costs, plus additional sums owed to an expert witness retained on their behalf. They would not pay, so, for the first time in my career, I sued a former client for my fees. Rice has counterclaimed, making numerous allegations concerning alleged defects in my representation and in our billing. Although an extremely wealthy individual, Rice is representing himself *pro se*. I am currently defending the counterclaims, and anticipate filing a motion for at least partial summary judgment as soon as my trial schedule permits.

23. Have you ever been convicted or received a suspended imposition of sentence for a felony or misdemeanor in state, federal or military court? (*Note that this question does not require that traffic offenses or other infractions be listed.*)

If your answer is yes, state the style of the case, where it was filed and explain in detail.

No.

24. Are you delinquent in the payment of any federal, state, county or city taxes? If yes, provide details.

No. No delinquent taxes ever.

F. MISCELLANEOUS

25. State whether you are able, with or without a reasonable accommodation, to perform the essential functions of being an appellate judge, including participating in oral argument; performing legal research; communicating clearly and effectively, both orally and in writing; supervising the lower courts, serving on court committees and performing other administrative functions; and expeditiously deciding issues coming before the court.

I am fully able to function as an appellate judge.

26. You must attach to this application at least one, but not more than three, writing samples that comply with the requirements set out in the instructions for applicants.

I think that this application is rather long, so I will attach only one writing sample: my *Respondents' Substitute Brief* filed in the Missouri Supreme Court in the *Eisel v. Midwest BankCentre* appeal discussed above.

27. List/describe any additional honors or awards you have received, activities you have performed, or any other information not set out above that demonstrates the quality of your work as an attorney or that you otherwise believe is relevant to the commission's decision.

I have no honors or awards, but I believe I have the respect of my colleagues, my clients, my opponents, and the judges I appear before.

I work hard. I have tried many cases and have handled even more appeals. I have not specialized in any particular subject area, but have attempted to remain open to all types of cases and do my best to master the law of each case as it comes along. As a result, I have handled cases in areas as diverse as patent law, bank guarantees, surface water runoff, suitability of securities sold to investors, the federal All-Writs Act, Indian treaty rights, the Missouri Merchandising Practices Act, automotive collisions, eminent domain, medical malpractice, copyrights and trademarks, cyber-squatting, landlord-tenant disputes, defense of attorneys subject to Bar discipline, proxy and prospectus violations in securities offerings, dissolutions of marriage, adoption, Lanham Act and other unfair competition actions, cell tower leases, civil racketeering (RICO), breach of fiduciary duty claims, breach of a union's duty of fair representation, and all sorts of disputes among partners, members of limited liability companies, and shareholders in nonpublic corporations, and every kind of fraud imaginable.

Please list the names of **five** persons whom you will ask to provide letters of reference for you with respect to your judicial qualifications. Do **not** list as a reference a judge of the court involved. As to each of the five references, **please provide name, title, mailing address, telephone and e-mail address. Please note that it is your responsibility to contact your references**, although if you intend to use as a reference a federal judge or other individual who only can provide a reference upon a specific request by the interviewing authority, please advise the commission and it will send that reference such a request. As to all references, it is your responsibility to see that they send the requested letters in a timely manner.

Provide your references with the attached Guidelines for References. The commission must receive your letters of reference, **via e-mail**, to JudgeVacancy@courts.mo.gov, by the date indicated in the Instructions to Applicants.

My references are:

My law partner since 1995 (with whom I've worked since 1991):

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And two judges:

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Because Judges Webber and Limbaugh are both federal judges, they cannot write a letter of recommendation on my behalf without first receiving a request for the recommendation by the Appellate Judicial Commission. I therefore respectfully request that the Commission make such a request of the judges.